

# DIVORCE AND THE FAMILY COURT

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This paper will attempt to answer these questions: (1) What kind of court should deal with divorce (along with divorce are included legal separation, annulment, and correlative issues)? (2) What progress has been made in America in organizing such courts? (3) What steps should be taken toward developing them?

The court treatment of families involved in divorce and separation issues, and in the controversies and maladjustments which always precede court action, is a matter of poignant concern not only to an increasing number of unhappy families but to every community. It cannot be said too often that the filing of a divorce petition is only a symptom of an underlying family problem which must be understood and treated if we are ever to have prevention and cure of the evils now involved in so many marriage failures. The welfare not only of the two partners but of many others is involved. The stability of our entire society is affected; the problem is a paramount concern of the state.

There has never been a time when a realization of these truths was more needed. This has been called a transitional era. At any rate it is a period of recurrent wars, of industrial and political change. It is an age of unrest but on the whole it is an age of great progress, materially, socially, and spiritually. Since the late war much has been said of the breakdown of homes through divorce and the lowering of moral standards as shown by increased crime and delinquency. We are beginning to see that these problems have always been with us and that their apparent increase is a reflection of the rapid social changes and maladjustments mentioned above.

The statistics of divorce are important only as they may indicate increasing family contention and loss of family stability. In this country the number of divorces and their rate as compared with increasing population have both advanced gradually but steadily for many years. Statistics have shown that the *rate* of increase has been greater in almost all the European countries, though the number of divorces has always been more here.<sup>1</sup> We had a marked decrease in divorces in the depression years but there was a tremendous increase in the war years, culminating in the all-time peak of 610,000 or 4.3 per 1000 population in 1946. Since then the number has decreased each year. The 1951 divorces in the United States numbered 371,000, back to the rate of 1942 which was 2.4 for every 1000 people in the country. There were 4.3 marriages for every divorce in 1951 as against 3.8 in 1946, the peak

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<sup>1</sup> Davis, *Statistical Perspective on Marriage and Divorce*, 272 ANNALS 9, 18 (1950).

year for both marriages and divorces.<sup>2</sup> The decrease in divorces since 1946 was partly due to a decrease in marriages and should lead to no false hopes and no lessening of interest in divorce reform. The number of unhappy homes as reflected in the divorce courts is still at a high level. In spite of all the discussion not much has been done as yet to develop the agencies of prevention or effective treatment.

When through a complex of social and individual causes a family has reached the breaking point and a permanent separation threatens, the court is or should be the last but most important defense set up by society to protect the family unit and to assure that its rights and those of each individual in it are protected. Today we still find that a great majority of the courts dealing with divorce are mainly concerned with the legal problems involved. But there are judges, and the number is slowly increasing, who weigh their legal responsibilities in the light of the greater social needs of the family and the community. In the words of one investigator, "Forceful judges, restive under the barriers of confining legislative restrictions, have utilized administrative powers as a tool to social vision and planning, being veritable Houdinis in wedging their ideas through the verbiage of the law."<sup>3</sup> But this is not all. Socially minded lawyers, legislators, and social workers, here and there, uninhibited by outworn precedents, have developed court systems and services which point the way to understanding treatment of the family in court.

#### WHAT KIND OF COURT SHOULD DEAL WITH DIVORCE?

Divorce and the marital conflict or maladjustment that precedes it are problems requiring social as well as legal diagnosis. The causes are many and complex. No two cases are alike. The grounds alleged in the divorce petition are seldom the real ones. Back of the two most commonly alleged grounds, cruelty and desertion, are to be found such problems as emotional immaturity, jealousy, sexual incompatibility, nervous exhaustion, desire for domination, and a host of others arising from self-indulgence or loss of the affection without which no real marriage can hope to endure. Then there are the social factors: interference of relatives, economic straits, environmental lacks, for some of which society must be blamed. To understand these causes, to adjust them, and to prevent divorce whenever it is possible and socially desirable, requires a court equipped with a specially selected judge and referees, qualified by training, experience, and personality to deal with family problems, and even more important, a court furnished with trained family counselors, social investigators, and other specialized staff. Every such court should have a counseling bureau to assist the many who will seek voluntary advice and assistance before applying for divorce. Here is where the best preventive work can be done.

At least 40 per cent of divorce cases have minor children involved, averaging

<sup>2</sup> Annual Marriage and Divorce Statistics, National Office of Vital Statistics, Public Health Service, Federal Security Agency, Washington, D. C.

<sup>3</sup> ETHEL M. DE SOUSA, A STUDY OF THE COURT PRACTICES OF MASSACHUSETTS DEALING WITH DOMESTIC RELATIONS (unpublished paper).

about two per couple. Their problems are the most important. In all of these cases the counseling staff should investigate the entire family, secure information upon which to recommend alimony or support payments, enforce their collection, and advise the judge on the important problems of custody. More than 300,000 additional children every year are deeply affected by divorce; they are the victims of divorce unless the court is equipped to guard their welfare.

It is increasingly evident that the same administrative organization and personnel standards long advocated for juvenile courts which deal with delinquent youth and their parents are needed by the divorce courts. Similar socially equipped courts have been created in some cities to handle the entire problem of desertion and nonsupport. Gradually the jurisdiction of juvenile courts has been broadened to deal with adults in such matters as contributing to delinquency and neglect, adoption and illegitimacy.

The disorganized family, it is generally admitted, is the chief factor in juvenile delinquency and neglect. It is not so much the broken home, as some recent studies have proven, since a home broken by death, divorce, or even the desertion of one parent, may still be a good home for the child, but it is the contentious, quarreling, unstable home that is most often the cause of unadjusted, antisocial children. It is impossible to deal with the child without dealing with the family and vice versa. This close relationship points unmistakably to the advantages of one socially oriented, socially administered court to deal with all court problems involving families and children.

When as in most of our cities and all rural counties the problems of children, of nonsupport and divorce are treated in two or three and sometimes in as many as eight different court systems the following results are noted: almost always there is a lack of cooperation and exchange of information between the courts, as a result of which there is duplication of effort, one family sometimes being under investigation or supervision in two or three courts; different and contradictory procedures and attitudes in the several courts are common; confusion and increased expense to the clients and cooperating agencies result. The usual situation is that one court, generally the juvenile court, has the staff to do the investigative and constructive work of the court but is quite unable, though it sometimes attempts it, to supply the services needed by other courts.

It is these facts and the obvious advantages of one unified court to deal with these related matters that prompted the first formal endorsement of the family court. In 1917 at its annual conference in Pittsburgh the National Probation Association, then a small but growing organization of probation workers and judges, adopted resolutions brought in by a committee on domestic relations courts, which was headed and inspired by Judge Charles W. Hoffman of Cincinnati. Judge Hoffman had pioneered in establishing the first family court, as distinguished (1) from the earlier domestic relations courts, with jurisdiction chiefly in nonsupport and desertion, and (2) from the juvenile courts with nonsupport and other adult jurisdiction,

established in some states; both latter types of courts are concerned with family conflicts but have no jurisdiction to grant divorce. Judge Hoffman's court, later followed substantially in six other Ohio counties, though called officially the Division of Domestic Relations of the Court of Common Pleas, has almost all the jurisdiction of the proposed family court. Ever since his election as the first judge of the Cincinnati court in 1914 Judge Hoffman has been an enthusiastic exponent of the unified court.

The resolutions of the National Probation Association in 1917 may be summarized as follows:<sup>4</sup>

That the courts at present organized under the name of domestic relations courts and juvenile or children's courts be organized under the title Family Courts and given jurisdiction in the following classes of cases:

Cases of desertion and nonsupport; paternity cases, known also as bastardy cases; all matters arising under acts pertaining to the juvenile court, known in some states as the children's court, and all courts however designated in the several states having within their jurisdiction the care and treatment of delinquent and dependent children and the prosecution of adults responsible for such delinquency or dependency; all matters pertaining to adoption and guardianship of the person of children; all divorce and alimony matters.

That these courts be under the direction of a single judge, except in jurisdictions where the work of the court is so great as to require more than one judge for the convenient and proper disposal of the matters coming before the court; in which case the court should have special divisions to which are assigned certain classes of cases, the court as a whole to be under the supervision and direction of a presiding judge.

That such courts be provided with ample probation departments upon which shall be conferred power to make all necessary investigations, medical, pathological, social, psychological or otherwise as shall be considered necessary, and that in pursuance of this work there be provided psychopathic laboratories sufficiently equipped to conduct the necessary scientific investigations.

That in the conduct of the work of the probation department no probation officer shall have under his charge, direction, and probation more than fifty cases at one time.

That all moneys decreed for payment of alimony or for support and maintenance of children by delinquent fathers or mothers shall be paid into the court, and that no private institution or organization be vested by law with authority to receive money or take charge of cases requiring probation except under the direction of the court.

That all cases involving children and intimate family relations be conducted as privately as possible, consistent with the law and the constitutional rights of the individual, and that publicity concerning abnormal family conditions be discouraged.

That the procedure in the family courts be informal and summary so far as it may be consistent with positive law, and that such equitable as well as criminal jurisdiction be conferred on the courts as will enable them to deal with all cases so as to effect the adjustment of individual and family conditions without legal formality or delay.

The following year the Association adopted supplementary resolutions urging that judges of family courts be appointed or elected for terms long enough to afford an opportunity to develop a social service program and opposing the rotation of judges, still prevalent in the higher courts. It was also recommended that the

<sup>4</sup> YEARBOOK OF THE NATIONAL PROBATION ASSOCIATION (1917).

judges be selected because of their special knowledge and information as to social service, as well as their attainments in the law, and that efforts be made to secure probation forces in the divorce courts, "to investigate the alleged grounds for divorce and the home conditions and environment of the children of the parties in the divorce action, and for supervising the homes and children after the divorce is granted."<sup>5</sup>

#### WHAT PROGRESS HAS BEEN MADE IN ORGANIZING FAMILY COURTS?

Discussion of family courts continued each year in the Probation Association but progress in developing courts with the broader jurisdiction was slow and sporadic. In 1926 a joint committee was appointed with the National Association of Legal Aid Societies. The chairman, John S. Bradway, presented a report based on a questionnaire study of court procedures and proposed a model law.

#### The Ohio Courts

Between 1917 and 1929 six other large counties in Ohio enacted special legislation establishing family courts with special judges and jurisdiction similar to that of the court in Cincinnati. These courts, which serve all the large cities of the state except Cleveland, are called domestic relations courts, but under our definition should be called family courts as they have jurisdiction over almost all juvenile and family matters, the only important exceptions being adoption and nonsupport where children are not involved. Special investigators or probation officers are used in the social investigation of divorce cases. A 1951 state law now requires that all families in divorce cases in which there are children under fourteen must be investigated. Reports are made to the court on the "character, family relations, past conduct, earning ability, and financial worth" of both parties to the action.<sup>6</sup> Six weeks must elapse between the filing of a divorce suit and the date upon which it may be heard. Because of its jurisdiction over all juvenile matters the court frequently has prior information on the families. Determinations of custody and support of children before and after divorce are not hurried, casual matters, as they usually are in divorce courts without specialized staffs. Children in divorce cases remain under the supervision of the officers, who assist in adjusting difficulties and in the collection of alimony and child support.

Ohio laws make no special provision for the appointment of conciliation or counseling officers but in some of the courts well trained and experienced family counselors have been appointed on the probation staffs. They interview both spouses and other persons, to adjust conflicts in an effort to prevent divorces where advisable. The Toledo court has two full time marriage counselors. Cases are referred to them before filing for divorce by attorneys, court staff, social agencies, or relatives, or the parties come of their own initiative. Plaintiffs and defendants, after filing, are invited to apply for marriage counseling. No charge is made. The

<sup>5</sup> *Id.* (1918).

<sup>6</sup> OHIO GEN. CODE §8003-9 (1951 Supp.).

service under the present staff is comparatively new and results are not yet known but the supervisor states that in his opinion marriage counseling has arrested family discord. Many interviewed last year who were contemplating divorce have not yet filed, and others became more reasonable and their children suffered fewer scars.

In Cleveland the Court of Common Pleas established in 1920 a department of domestic relations, the first of its kind in the country. It serves as the investigation, adjustment, and enforcement arm of the divorce court. It consists of a staff of about twenty-five persons appointed by the judges, and has a director, field investigators who work in districts covering the county, and a clerical staff. The director and several staff members are lawyers, but their work is not legal or judicial. The department makes social investigations in all cases referred by the court, all motions for custody or alimony, publication cases, and failures to support children. Since last year all applications in which there are children under fourteen are investigated. Written reports are submitted to the court.

The department carries on "reconciliation" work, consisting of conferences held at the request of one or both parties in an effort to adjust marital difficulties before the institution of legal action. Many successful adjustments are reported. Conferences are also held on request after a divorce action is filed. Most of these requests come from defendants, all of whom receive a notice at the time they are first served, offering a conference with the plaintiff present.

The department seeks to bring about enforcement of the orders of the court, especially as to payment of alimony and support of children. Adjustments are reached through investigation and conferences held by a member of the staff of the department who is an attorney. Both parties and counsel attend. If no agreement can be reached a full report is made to the court. There is no doubt that the work of this department has been of great assistance to the judges and that it has helped to reduce the evils of divorce by protecting the interests of the clients, especially of the children involved. No doubt it has also prevented some divorces.

#### The Michigan Friend of the Court

The office of friend of the court was created by order of the circuit court in Wayne county, Detroit, in 1918, at first chiefly to enforce payment of alimony. The attorney then appointed still serves as head of a large bureau. The next year Michigan passed its unique statute requiring the appointment of a friend of the court in each county. Attorneys or other competent persons are appointed by the governor on recommendation of the circuit judges. Some of these serve part time; in many of the smaller counties a probation officer of the circuit court serves as the friend of the court.

In Detroit the work is highly developed. By amendment to the act in 1939 the judges<sup>7</sup>

may refer to the "Friend of the Court" for investigation and recommendation all . . . motions in divorce, separate maintenance and annulment cases. . . . Said "Friend of the

<sup>7</sup> MICH. COMP. LAWS §552.253, MICH. STAT. ANN. §25.171-4 (1948).

Court" shall assume responsibility for the enforcement of all preliminary and interlocutory as well as decretal orders in such causes. The court may designate the "Friend of the Court" to act as referee in the taking of testimony of witnesses and hearing the statement of parties upon pending motions and such "Friend of the Court" so designated shall take and subscribe the oath of office provided by the constitution and shall have authority to administer oaths and examine witnesses and shall make a written, signed report to the court containing a summary of the testimony and a recommendation for the court's findings and disposition of such matters.

Over one hundred persons are employed in the Detroit office. By rule of court they investigate and submit a written report with recommendations regarding custody in every divorce case where there are children under seventeen. The report on home conditions is made in great detail. They also investigate and recommend in all cases in which there is a petition for alimony. In these investigations the real causes of the divorce may be revealed. In some Michigan counties the friend of the court makes a confidential report for the judge and a report for the public record. In Detroit only one report is made which becomes a part of the files of the case.

Adjustment of marital difficulties is the end sought, though opportunities for counseling are limited because most cases are referred after the filing for divorce and because of the heavy load of investigations. The office of the Wayne county friend of the court is not primarily a social casework agency. Legal training predominates and most of the investigators are not trained in social work. However, they effect many social adjustments. In a full study of this work in 1935 by the Judicial Council of Michigan it was found in a group of 1000 cases studied that 114 pending actions were voluntarily dismissed and that in 11 of these cases the friend of the court was entirely responsible for accomplishing a reconciliation, while in 63 others he cooperated with other persons in so doing.<sup>8</sup> The office also does effective work in enforcing payments for alimony and support of children and collects large sums of money for this purpose. Although all this work is confined to divorce cases there is considerable duplication of effort and not always enough cooperation and exchange of information between this office and the three other courts in the county who handle family support or children's cases.

#### St. Louis, Omaha, Des Moines, and Portland

In 1921 the Court of Domestic Relations was established by law as a branch of the Circuit Court of St. Louis with juvenile and divorce divisions. The two divisions have continued to operate like separate courts, having their own staffs and special judges assigned from the circuit bench. The divorce court employs a staff of eight investigators under a supervisor. They are required to make social investigations to determine alimony, support, and custody in all cases in which minors are involved. Both spouses are seen if possible, but the investigators do not go into the merits of the divorce proper. Full written reports are submitted

<sup>8</sup> REPORT OF THE JUDICIAL COUNCIL OF MICHIGAN (1935 Appendix).

to the court at the hearings. The reports are confidential but may be seen by the litigants and their counsel.

In 1921 Omaha, Nebraska, established by rule of court a division of the district court with jurisdiction in all juvenile and divorce cases. A full time judge is assigned from the court and juvenile court probation officers serve as investigators in divorce matters. In 1924 similar action was taken in Des Moines, Iowa. In 1929 a domestic relations court was established by law in Portland, Oregon with juvenile court, adoption, and divorce cases under a specially elected judge. A qualified worker is employed to investigate cases in which there are problems of child custody or visitation. Juvenile court probation officers also assist the court.

### The Milwaukee Family Court

In 1934 a new branch was established in the Circuit Court of Milwaukee county called the Family Court. This branch handles the uncontested or default divorces. Another judge handles contested divorces. Both judges are assigned from the bench for six month periods. All the judges rotate. There is a divorce counsel who conducts hearings on motions in divorce matters, and an assistant divorce counsel who appears on behalf of the state in all contested cases.

A Department of Domestic Conciliation, created by statute, was attached to the family court for investigation in matters of custody and alimony and for counseling and reconciliation work.<sup>9</sup> The department is unique in that it has had from the start a well-trained, full time staff under a competent and experienced social worker, as director. All members of the staff are appointed under civil service. At present besides the director there are nine social workers and five stenographers. The social workers are now required to have at least one year of training in a school of social work. The following statement submitted to the writer by Andrew Newman, present director of the department, sets forth so clearly the functions of this department that I am quoting it fully:<sup>10</sup>

The department has two broad functions which are derived from the statute and administratively interpreted and implemented by me under the broad direction of the judges. First, the department receives and makes proper disposition of all domestic complaints. Second, the department exercises such supervision in connection with the exercise by the divorce court of its jurisdiction as the judges may order, or, in other words, the department acts as the social service department for the divorce court.

In the matter of receiving domestic complaints, the department operates like any other social agency. We are a member of the Milwaukee Community Welfare Council and the Social Service Exchange. Our case records are confidential and are available only to our staff, the judges, and the divorce counsels. Applications for advice and counsel in the area of marital problems and domestic difficulties are made directly by one or both parties. Referrals to us are made by attorneys, social agencies, clergymen, the district attorney's office, the courts, the general public, etc. Most of the applicants come before filing divorce but we receive many requests for help after divorce is filed and work with both groups. The applicant is interviewed by our intake caseworker in

<sup>9</sup> WIS. STAT. §252.07 (1933).

<sup>10</sup> Letter of Andrew Newman to Charles L. Chute, dated August 12, 1952.



accordance with generally accepted casework interviewing principles. In some instances only one interview is necessary or possible in order to properly orient the client. In other instances, several interviews are had or perhaps the spouse is called in.

More or less detailed records are kept of our interview but are kept confidential, as previously stated. Sometimes the client is referred to a voluntary social agency where long time specialized counseling is indicated. Referrals to the clergy, to physicians, to psychiatrists, attorneys, police, etc., are made where indicated. If and when divorce action is instituted, pertinent summarizations of our records are presented to the judge and divorce counsel only, at the time of hearings. This provides a social background picture for the court, in addition to the testimony brought forth by the questions of the lawyers. The judge or the divorce counsel may use our memoranda as the basis for questions which bring out pertinent social material, especially as it relates to the ability and fitness of the parents to have custody of minor children. These memoranda are not given to the attorneys of the litigants, although the questions which arise from them may bring forth testimony which becomes part of the public court record.

The department, in acting as the social service department for the court, contributes significantly in the way of social handling of divorces by the court. Whenever it appears to the judge or the divorce counsel in the course of a hearing that there is reason to question the adequacy of the care being given or proposed for minor children, he may direct an investigation by our department. This involves a thorough and detailed social study by one of our caseworkers. Interviews are had with the parties, schools, attorneys, neighbors, physicians, police, etc. Material, if it exists, is secured from other social agencies. A written summary is prepared by the caseworker and presented to the court within a few weeks. Duplicate copies are prepared for perusal by the attorneys but not for their possession. The summaries are not made available to the clients. At the hearing, if the opposing attorneys so stipulate, then the report is read by the court and considered in the disposition of the case. If the attorneys will not stipulate that the report be accepted, then the caseworker is put on the witness stand to testify under the rules of evidence as to the information he has secured. In such a case the assistant divorce counsel, as well as the opposing attorneys, may ask questions based on the report, in order to bring out the pertinent material. You will see that in this manner the court protects minor children from being given into the custody of a parent or other person who may be physically, morally, emotionally, or otherwise unfit or incapable of giving adequate care to the children.

In some cases the court is faced with the problem of giving children into the custody of parents or persons who are not definitely unfit, but are not completely satisfactory. These situations are put under our supervision by the court. The caseworker counsels, advises and supervises for a substantial but usually indeterminate period. In most cases conditions are adjusted satisfactorily so that in a year or two we request and secure termination of supervision. Occasionally an unsatisfactory situation is brought to the court's attention and a further hearing and possible change in custody results.

Occasionally the court is faced with the necessity of removing custody of minor children from both parents. Our department acts as the liaison agent with the child welfare agencies, both public and private, and sets up the alternative plans for the court's approval.

The department acts as the agent in arranging occasional medical and psychiatric examination or care for divorce litigants or their children. We occasionally provide budget counseling on court order, help compute alimony arrearages, prepare wage assignments, verify wages and employment, and other matters too numerous to list.

Not on court order, but still as the social agency for the divorce court, we accept for service many voluntary requests for disposition of problems resulting from divorce such as non-payment of alimony or support, friction over visitation of children, alleged neglect of children, etc. We regard it as a valid function to try to help divorced persons to adjust these matters whenever possible without court action.

Records are kept in our files regarding all the contacts we have, in addition to material collected from the police, social agencies, etc. Whenever any matter regarding a divorce case goes into our court, we send any pertinent information to the court.

It is to be noted that at present there is no requirement that parties to a divorce action be interviewed regarding reconciliation by the Department of Domestic Conciliation before or after proceeding with divorce. It is also to be noted that we do not make custody investigations in all cases, nor do we supervise custody in all cases. The cases referred to us by formal court order are referred on a selective basis at the discretion of the judge.

You may be interested in the following figures: In the year 1951 we received 1698 applications and complaints. Of this number, 422 applied voluntarily before divorce action was commenced. Almost all of these 422 were in the nature of domestic difficulty between husband and wife. The remaining 1276 cases involved divorce litigants, and of these about two-thirds were concerned with care or custody of children.

Of the 1698 applicants, about five-sixths received from one to four interviews, while the balance were carried on a long-time basis. The total long-time load in 1951 composed of carry-overs from 1950, plus long-time cases commenced in 1951, was about 525. Of these, about 400 were cases involving children and opened on specific order of the judge or divorce counsel.

Thus, cases referred by the judges and divorce counsel comprise almost a fourth of our total intake, and about three-fourths of our long-time caseload. Since we have a staff of nine caseworkers, you will see that the courts and this department are giving a substantial social service to the handling of divorce and especially to children of divorced parents.

#### The California Children's Court of Conciliation

In 1939 a law was enacted in California providing for the establishment of a "children's court of conciliation" as a part of the superior court in each county. In 1945 the act was amended to provide that it should be applicable only in counties in which the superior court determines that it is feasible and necessary. Only Los Angeles county has established such a court. It is understood that the plan was conceived and the bill drafted by the famous Ben B. Lindsey, who became its first judge and continued as such until his death.

The law provides that "prior to the filing of any action for divorce, annulment, or separate maintenance, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties. . . ."<sup>11</sup> The court is given jurisdiction to hear any family controversy when there are minor children involved. It may issue notices and, if necessary, citations to respondents. Hearings are conducted informally in chambers. Records are confidential. No fees may be charged. The aid of doctors, clergymen, and others may be invoked. Temporary

<sup>11</sup> CAL. CODE CIV. PROC. ANN. §1761 (1949).

orders may be made and after one party requests conciliation neither spouse is permitted to file action for divorce for a period of thirty days. After this period, in cases that have been before it for conciliation, the court is given power to hear, try, and determine actions for divorce. Judges of the superior court are required to refer cases to the court in which there has been a filing where children are involved. In some cases the court may hear applicants who do not have minor children.

In Los Angeles county the superior court is authorized to appoint a commissioner known as the director of conciliation, one investigator, and two stenographers. The duties of the director are to receive applications and complaints, investigate cases, hold conferences, make recommendations, and provide supervision. It would appear that the filing of a petition for hearing by the court is entirely voluntary, but the judges have reported a large number of petitions received and many reconciliations. A recent report from the court states that for the year and a half ending June 30, 1952, 1743 new cases were filed, 482 of which resulted in reconciliations with 968 children involved.

#### The Family Court in the State of Washington

In 1949 the state of Washington passed a law requiring each superior court to establish a family court for the hearing and reconciliation of marital controversies.<sup>12</sup> A court was established in Seattle with Judge William G. Long of the juvenile court designated as judge. The act follows the California Children's Court of Conciliation law closely. Its chief purpose is to provide for hearings at the request of either or both spouses who are in controversy and where there are children involved, for the purpose of reconciliation. Such hearings may also be held after action for divorce is started, the cases being transferred from the superior court. The conciliation provisions are the same as in the California act except that it is expressly provided that these provisions "may be used in regard to post-divorce problems, concerning support, visitation, contempt, or for modifications based on changed conditions." In the larger counties the superior court may appoint a family court commissioner and such investigators, stenographers, and clerks as the court shall find necessary. In Seattle a small staff is employed and an advisory committee of citizens has been appointed.

#### Texas

In 1949 legislation was passed in Texas making the juvenile courts in the larger counties in effect family courts, with jurisdiction in all children's cases, including adoption and custody, in desertion and support cases, and in divorces involving children. In Dallas the family court plan was put in effect by rule of court some years before the state law passed. The court now employs three divorce custody investigators and recently added a divorce counselor to assist the court. A district court judge is assigned to the court for an indeterminate period.

<sup>12</sup> Wash. Laws 1949, c. 50.

### Other States

In an increasing number of states legislation has been passed requiring probation officers of juvenile or adult courts, or those employed by state or county departments, to make investigation reports when requested by the divorce courts in cases where the custody or support of children is involved. The practice has been growing. The plan is more or less a stop-gap and is unsatisfactory, on the whole, because most probation officers of our courts are already over-loaded and the divorce court judges hesitate to call on the officers of other courts in a majority of cases. It is a principle of the family court that all cases, at least all in which children are involved, should automatically come to the investigation and counseling department as early as possible in the controversy. Massachusetts provides that the courts hearing divorces may appoint an attorney to investigate and report in any divorce suit. He is paid a fee as determined by the court. Police and probation officers are commanded to assist on request. A few judges have used the plan extensively.

Brief mention may be made of proposals in other states to advance the principles of the family court. In New Hampshire bills have been introduced in the past to establish family courts with combined juvenile and divorce court jurisdiction and the matter has been under discussion in the State Bar Association. Kentucky enacted in 1946 a friend of the court law to provide for investigations in divorce cases. In New Jersey a committee on custody and divorce, appointed by Chief Justice of the Supreme Court Arthur T. Vanderbilt, made an extensive report in 1950. It recommended the strengthening of probation service in all counties and the increased use of probation officers in investigation and supervision of cases in the divorce courts. It also recommended that the existing juvenile and domestic relations court judges, who handle no divorce cases, be assigned to preside at conciliation conferences when requested by a husband or wife before divorce and that no divorce complaint be filed until a conciliation conference has been held. It can be said without much fear of contradiction that such a plan cannot possibly work out unless a considerable increase is made in the overworked and underpaid staffs of the juvenile courts and probation departments. Specially trained officers, not now available in most probation departments, are also needed for the important and difficult work of conciliation or counseling service in matrimonial cases.

In Connecticut the State Government Organization Commission recommended in 1950 a separate statewide family court with six full time judges appointed by the legislature upon nomination of the governor, to serve for eight-year terms at salaries of \$12,500. The judges would sit in districts throughout the state and would have adequate staffs. The proposed family court would have jurisdiction of all juvenile and family matters including contributing to delinquency or dependency, adoption, guardianship, nonsupport, bastardy, and divorce. These family cases are now dealt with in five separate courts, none of which, except the state juvenile court, have even reasonably adequate staffs or judges especially selected for the work. Apparently fearing that this ideal proposal might prove too radical for Connecticut,

the State Legislative Council has suggested a modified proposal for a state domestic relations division in the superior court with one or more judges designated to have exclusive jurisdiction in divorce and in the family matters now under the superior court. The matter is hotly debated and it is hoped that the watered-down proposal will not prevail. Connecticut has led the nation in establishing the best state-administered juvenile court in the country and it is to be hoped the state may pioneer again in establishing a fully organized, independent, state family court.

Progressive leaders in Minnesota have long urged a domestic relations or family court in that state. In 1949 the legislature authorized Governor Youngdahl to appoint a commission to study the laws and court organizations dealing with juvenile and family matters. Members of the legislature and leaders in the legal, judicial and social welfare fields made up the commission. Its published report, submitted to the legislature of 1951, presents a sound and progressive program of divorce law reform which may well serve as a guide to other states. A model bill is included, "providing for the establishment of family courts; providing aid to such courts; providing for a conciliation service in divorce and separate maintenance cases."

The conciliation procedure proposed is very similar to that of the California and Washington laws, except that there is no limitation of the service to families where there are minor children involved. Either party in any domestic controversy, before filing for divorce or separate maintenance, may file a petition for an informal hearing before the judge. Respondents and witnesses may be cited to appear and no fees may be charged. The hearings are private and confidential. With the consent of both parties the aid of physicians, psychiatrists, clergymen, and others may be invoked. The court may make temporary orders, to be effective for no more than 90 days without the consent of the parties. The filing of a petition for reconciliation proceedings is mandatory before any action for divorce or separate maintenance can begin and a "cooling off" period of 90 days from the filing of the petition may be required. Qualified "conciliation officers" are provided for investigation, preliminary conferences, recommendations, and supervision. Probation officers are required to assist the court.

The Commission says of this proposal:<sup>13</sup>

It is a radical departure from the present practice in this state. . . . It is believed that many marriages can be saved by an intelligent attempt at conciliation before, and not after, the parties start a divorce action and before recriminations and accusations become part of the public records. . . . The fact that there is some official person available to whom the parties must go before precipitantly starting a divorce action is, we believe, a sound social advancement.

The recommended acts provide for the establishment of juvenile and family courts, with combined jurisdiction of all juvenile court and family matters, as a division

<sup>13</sup> STATE OF MINNESOTA, REPORT OF THE INTERIM COMMISSION ON DOMESTIC RELATIONS PROBLEMS (St. Paul, 1951).

of the district court in the three largest counties, and the establishment of family courts at the discretion of the district courts in the smaller counties. A constitutional amendment is recommended so that the family court with combined jurisdiction may be made statewide.

The Commission report also proposes amendments to the marriage and divorce laws abrogating the doctrine of recrimination so as to discourage default divorces and providing that the court may grant divorce "if the court finds that a reconciliation cannot be had and that the best interests of the parties, their children if any, and the public will be served." None of these advanced measures were enacted in 1951 but it is expected that they will be urged in 1953.

Interest in divorce reform and family courts is growing in other states. In New York the several bar associations have long been concerned with the evils of a too restricted law which does not prevent divorce and separation but does continually promote perjury and dishonesty. Following the last of a series of exposures of an active divorce mill, the Bar Association of the City of New York created a committee which has repeatedly urged needed corrective legislation. In New York City there has been increasing interest in an enlarged domestic relations or family court to provide investigation and conciliation services in one court for all family cases. As yet none of the divorce courts in the state have developed any social services.

The outstanding report of the legal committee of the National Conference on Family Life in 1948, prepared and presented under the joint chairmanship of Reginald Heber Smith of Boston and Judge Paul W. Alexander of Toledo, and the endorsement of its recommendations by the American Bar Association, have done much to increase national interest in the therapeutic procedures in divorce which have been and are now increasingly being developed in some courts. The committee strongly recommended that there be established family courts with broad jurisdiction to handle all justiciable family problems from juvenile delinquency to divorce; and that so far as possible the philosophy and procedure of the family court be similar to that of the juvenile court, requiring like the latter, a specialist judge or judges and an adequate staff of trained technicians and specialists, adequate quarters, and a proper clerical staff.<sup>14</sup> An inter-professional commission has been established to carry out the Bar Association proposals, to conduct studies, and to draft bills. Its work should result in strengthening and accelerating the movement which has long been under way to develop family court procedures.

#### WHAT STEPS SHOULD BE TAKEN TOWARD DEVELOPING FAMILY COURTS?

The varying experiments and proposals for family courts may present a confusing and to some a discouraging picture. Progress has been slow and sporadic, but public interest has been maintained and today appears to be increasing in many sections of this country. To deal with the growing problems of family maladjustment more scientifically, humanely, and preventively we must have as stated earlier in this

<sup>14</sup> Alexander, *The Follies of Divorce: A Therapeutic Approach to the Problem*, 36 A.B.A.J. 105, 170 (1950).

paper: courts equipped with specially selected judges and referees, qualified by training, experience, and personality, furnished with adequate staffs of social investigators, family counselors, and other specialized workers. Parts of this program have been and are now being successfully developed but nowhere has it been completely implemented. Comparative and evaluative studies of these varied court plans are greatly needed, especially those that have been continued long enough to show results. Further experiments may be necessary, but it would seem that by now we should be able to evolve general standards of legislation and administration to include the following:

1. *Organization.* A statewide system of separate family courts should be established; such courts may be autonomous divisions of existing courts of general jurisdiction, as in Ohio, or entirely separate courts. There are advantages both ways and the answer depends upon the history and present organization of courts within the state. The plan should be statewide and either state administered or state regulated and assisted. At the same time the courts should be close to the people they serve. They should usually be organized by counties but in states with many sparsely settled areas they may be organized by districts made up of several counties. Through the use of referees and local offices the court should be available to serve without unnecessary delay in every county and large community. So far these courts have functioned only in large cities. Rural family problems while not as numerous or concentrated as in cities are just as difficult.

2. *Jurisdiction.* As has been said before, a single court organization for all child and family court problems, including divorce, has a great many advantages and few disadvantages as compared with our prevailing system of separate, overlapping courts. The problems of child neglect and delinquency, child custody, nonsupport, and marital conflict are all linked together. The family should be the unit of treatment. The same methods of diagnosis and counseling are needed in all of these, and the same kind of personnel. Cooperation between separate courts is sought but it never can be as effective as in a unified court with one system of records. An adequate staff can be more easily developed and supervised in one court than in several separate courts. More specialization will also be possible, and better protection of children whose problems should be dealt with in separate sessions whenever possible. A court of such importance to the community should have adequate quarters and facilities of every kind, including facilities for interviews, child detention, and transportation. Finally it will be better able to enlist cooperation and citizen support.

3. *The Judge.* Laws and court systems are unimportant except as they assure the appointment of adequate and well qualified personnel. The recommendation for a specialist judge requires that his qualifications for the work be determined in advance. Selection should never be determined by rotation. Too many times designation by the bench for the juvenile court has meant the choice of a judge wholly without interest or qualifications for the work. Whether he is specially

appointed or nominated for election he should pass certain tests to assure that he has both legal and sociological training and experience, and, above all, the personality and character essential for dealing kindly and constructively with individuals and families in trouble.

As there seems little chance in the foreseeable future that our states will adopt the European model of a professionally trained judiciary, appointed and advanced for merit, a system of nomination by a representative, disinterested board, and of appointment by the Governor, with opportunity for recall by the people, similar to the so-called Missouri plan, endorsed by the American Bar Association, seems most feasible.

4. *The Staff.* The family court, or a divorce court, like every successful juvenile court, is and must be a social agency as well as a court. Most of its work, except the judicial, administrative work of the judge and the referee is carried out by a staff which, beside the clerical workers, should be trained primarily in social work. They must demonstrate their professional competence in the arts of social investigation, social interviewing, counseling, and casework.

It has been rather difficult for laymen and for lawyers, belonging to another profession with exacting standards, to recognize the fact that social work is a separate profession which has training requirements that are becoming as important in social work as they have long been in law or medicine. To this end it is absolutely essential that staff appointments be non-political, preferably under an expert civil service or merit system, an essential to government in this country. The Milwaukee Department of Domestic Conciliation may well serve as a model with respect to quality and selection of staff, though it is quite inadequate in numbers to do the intake, investigation, and counseling service required.

5. *The Counseling Service.* As has been said, every court handling divorces should have counselors, now referred to in some of the laws under the rather limited and inappropriate title of "conciliator" or "conciliation officer." Special training for these workers, now generally called marriage counselors, is essential if they are to succeed in the difficult task of changing attitudes, inspiring confidence and self-help, and solving intricate marriage controversies. This is the heart of the family court and the best hope for the reduction of the divorce rate. It is not enough to build a voluntary counseling organization, within or without the court. Counseling as well as adequate social investigation should be compulsory and precede formal action in every family or child case.

6. *Semantics.* In our individual, states'-rights consciousness we have as yet developed no uniformity even in the name of the court dealing with families. The name "family court" is applied to all sorts of courts: to courts handling divorce problems only as in Milwaukee or the state of Washington, to a court with non-support jurisdiction only as in New York City, and even, in the case of one large city recently, to a juvenile court with jurisdiction over adults contributing to juvenile delinquency and neglect. "Domestic relations court" has the same variety of



meanings. It would be well if all states would agree to apply the name family court only to courts having complete juvenile and family jurisdiction, including divorce, and the more limited title domestic relations court to those having jurisdiction only in family matters other than divorce.

The next steps? As suggested above there is a need for more intensive, evaluative study of the varied experiments we have been conducting in family court work. There is need for leadership to bring together the groups and individuals working toward standards in the various states. We need model laws, the development of rules and principles, and above all the extension of training for the specialized personnel that is so urgently needed. To all of this public interest and support is the answer. It seems to be on the way.